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IN THE  
Supreme Court of the  
United StatesOCTOBER TERM, 2005ZACHARY WITMAN,  
Petitioner,

--against--

COMMONWEALTH OF PENNSYLVANIA,  
Respondent.

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PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPERIOR COURT OF  
PENNSYLVANIA

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PETITION FOR A WRIT OF CERTIORARI

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NATHAN Z. DERSHOWITZ\*  
AMY ADELSON  
DERSHOWITZ, EIGER  
& ADELSON, P.C.  
220 Fifth Avenue  
Suite 300  
New York, NY 10001  
(212) 889-4009

\* Counsel of Record

Attorneys for Petitioner  
ZACHARY WITMAN

## **QUESTIONS PRESENTED**

Whether, in determining whether to try a child as an adult or a juvenile, it violates due process of law to condition transfer to juvenile court on the child's admission of culpability.

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## OPINIONS BELOW

The Opinion with Findings of Fact of the Court of Common Pleas of York County Pennsylvania is unreported and is set forth at App. 1. The Opinion of the Pennsylvania Superior Court is unreported and is set forth at App. 24. The order denying petitioner's petition for allowance of appeal by the Pennsylvania Supreme Court is set forth at App. 40.

## JURISDICTION

The opinion of the Pennsylvania Superior Court was entered on January 11, 2005. Petitioner's timely filed petition for allowance of appeal to the Pennsylvania Supreme Court was denied on May 12, 2005. Petitioner's application for an extension of time within which to file a petition for a writ of certiorari was granted on July 14, 2005, extending the time to and including October 9, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part:

No persons shall be ...deprived of life, liberty, or property, without due process of law.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law.

42 Pa.C.S.A § 6322(a) provides, in pertinent part:

... If it appears to the court in a criminal proceeding charging murder . . . that the defendant is a child, the case may similarly be transferred and the provisions of this chapter applied. In determining whether to transfer a case charging murder . . . the child shall be required to establish by a preponderance of the evidence that the transfer will serve the public interest. In determining whether the child has so established that the transfer will serve the public interest, the court shall consider the factors contained in section 6355(a)(4)(iii) (relating to transfer to criminal proceedings).

42 Pa.C.S.A § 6355(a)(4)(iii) provides (that a transfer of the offense is appropriate when):

(4) The court finds . . .

(iii) that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution. In determining whether the public interest can be served, the court shall consider the following factors:

(A) the impact of the offense on the victim or victims;

(B) the impact of the offense on the community;

(C) the threat to the safety of the public or any individual posed by the child;

(D) the nature and circumstances of the offense allegedly committed by the child;

- (E) the degree of the child's culpability;
- (F) the adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system; and
- (G) whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:
  - (I) age;
  - (II) mental capacity;
  - (III) maturity;
  - (IV) the degree of criminal sophistication exhibited by the child;
  - (V) previous records, if any;
  - (VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child;
  - (VII) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;
  - (VIII) probation or institutional reports, if any;
  - (IX) any other relevant factors; and
- (iv) that there are reasonable grounds to believe that the child is not committable to an institution for the mentally retarded or mentally ill.

## INTRODUCTION

At the age of 15, petitioner Zachary Witman, charged with a murder he vehemently denied committing, was compelled to make a choice that would be difficult at any age but is nearly impossible for a child: to admit that he had killed his younger brother, and likely be transferred to juvenile court for treatment, or to maintain his innocence and face trial and sentencing as an adult. Zach maintained his innocence, was convicted, and received the only sentence available under the law: life in prison without the possibility of parole. This Petition asks this Court to address the very difficult but exceedingly important question of whether this choice comports with due process – whether a State, consistent with the Constitution, may condition the transfer of a child to juvenile court on his confession to the charged crime.

## STATEMENT OF THE CASE

Tragedy struck the Witman family on October 2, 1998. Thirteen-year-old Gregory Witman, an outgoing and personable child, was brutally murdered just seconds after he came home from school. His 15-year-old brother Zachary, a popular A-student, with no history of disciplinary problems, had stayed home from school that day, feeling sick to his stomach. Before she left for work, Zach and Greg's mother had run to the store to buy soup and other provisions. Zach spent the day sleeping, watching television, playing with his dogs.

At about 3:05 p.m. or 3:06 p.m., Gregory got off the school bus, a few blocks from his home. At 3:09 p.m., Greg's best friend, Erynn Jeffrey, called the Witman home. Someone picked up the phone and hung up without speaking. Erynn told the police and later testified at Zach's trial that she could tell it was the downstairs phone because it was a flip phone and she could hear the phone click when the person hung up. Erynn called back at 3:15 p.m. Zach answered and told her that Greg was not yet home from school. Zach sounded perfectly normal,

not out of breath. Erynn testified that she could tell that Zach was on an upstairs phone because, when he hung up, it did not have the distinctive click of the downstairs flip phone.

At 3:17 p.m., Zach called 911, screaming, "Oh my God. Oh my God. I just came downstairs. My brother, his throat is all cut up." In tears, he told the 911 operator that he had been sleeping upstairs, heard a noise, came downstairs and found his brother bleeding, his throat cut and his head just "hanging." He begged repeatedly to call his mom. The 911 operator instructed Zach to move Greg's body. He didn't want to, but he did what he was told, crying, "oh my God, I just moved him, and his head practically came off." He begged again for help. "Come on. Come on. He's lying there. There's nothing holding him together, its nothing. No one's coming. No one's coming."

At about 3:24 p.m., someone finally came. Emergency medical personnel, responding to Zach's call, found him in the garage, hysterical, hyperventilating, flailing and waving his hands. He begged to speak to his mother and repeatedly said that he had come downstairs and found his brother in the laundry room, bleeding. Zach was having trouble breathing and was taken to the emergency room, where he was treated for hysteria and "acute grief." Both the EMT who took him to the hospital and the emergency room doctor noticed that he had a minor cut oozing blood on his left hand. The emergency room doctor found no evidence of bruises or contusions and toxicology reports showed no alcohol or drugs in Zach's system.

Zach had no criminal record, no history of violence, no school record of disciplinary problems. To all accounts he was a good kid and had a close and loving relationship with his younger brother. Yet he instantly became the sole suspect. The police found a small pocket knife, determined to be the murder weapon, and a pair of bloodied soccer gloves buried in the Witman's backyard. Zach's DNA was not found on the gloves, despite his oozing cut. The police were not able to trace either